

Internal Revenue Service
memorandum

TL-N-6706-88

WHEARD

date: JUL 8 1988

to: District Counsel, Seattle W:SEA
Attn: Henry Schaffer

from: Director, Tax Litigation Division CC:TL

subject: [REDACTED]

This is in response to your request for technical advice dated May 25, 1988.

ISSUE

Whether the Service will allow a taxpayer to take a standard settlement for an abusive master recording shelter where the taxpayer previously piggybacked.

CONCLUSION

No. We will not allow petitioners out of the binding piggyback agreement in which they agreed to be bound by the decision in another case.

FACTS

Petitioner's in this case, [REDACTED] and [REDACTED] executed an agreement of stipulation in which they agreed to be bound by determinations in the Weldon and Secoy cases. Subsequent to determinations favorable to the government in these cases they now wish to "opt out" of their "piggyback" method of trying their cases as indicated in a letter of May 20, 1988 written by their attorney. They wish to be given the current settlement offer which relates to the years in litigation and all future years.1/

1/ We understand that the appeals officer in this case has required all settling partners to first "elect out" of the provisions of TEFRA before entering into settlements. An "election out" other than under section 6231(b) is invalid. Thus, the purported elections out in this case are invalid. Thus, we are analyzing the above case as if a court would ignore the election out of TEFRA.

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DISCUSSION

An agreement to be bound by determinations in another case is binding on a taxpayer. Adams v. Commissioner, 85 T.C. 359 (1985). Thus, the petitioner's in this case are bound by their "piggyback" agreement unless other considerations of law or policy apply.

Petitioner's counsel states in her letter that:

it does not make sense to force a taxpayer to be bound in prior years where, under Tefra (sic), the taxpayer cannot be denied an extension of the offer in subsequent years.

Petitioner's counsel misstates the law as it is applicable in this case. She is apparently referring to I.R.C. § 6224 which provides in part:

If the Secretary enters into a settlement agreement with any partner with respect to partnership items for any partnership taxable year, the Secretary shall offer to any partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement.

Temp. Treas. Reg. § 301.6224(c)-3T(b) provides:

"Consistent" settlement terms are those based on the same determinations with respect to partnership items. Settlements with respect to partnership items shall be self contained: thus, a concession by one party with respect to a partnership item may not be based on a concession by the other party with respect to a nonpartnership item. Settlements shall be comprehensive, that is, a settlement may not be limited to selected items. The requirement for consistent settlement terms applies only if-

- (1) The items were partnership items for the partner entering into the original settlement immediately before the original settlement, and

(2) The items are partnership items for the partner requesting the consistent settlement at the time the partner files the request. (emphasis supplied)

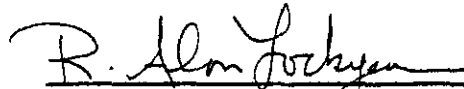
A "comprehensive" consistent settlement based on the "same determinations with respect to partnership items" cannot be given under Temp. Treas. Reg. § 301.6224(c)-3T(b) since the Court determinations with respect to the years in litigation will make a comprehensive consistent settlement impossible. "Same determinations" would include such things as beginning basis, the amount of carryforwards, or other beginning and ending balances which would, under the settlement, be inconsistent with the Court determinations. Thus, it would be impossible to give the petitioners a comprehensive settlement based on the same determinations as required by the regulations.

Additionally, petitioners have not shown any reason why, as a policy matter, they should be released from the agreement.

In summary, we agree with your conclusion that petitioners should not be released from their settlement agreement.

MARLENE GROSS

By:



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